

NATIONAL CAPITAL COMMISSION
COMMISSION DE LA CAPITALE NATIONALE

August 11, 2017

Mr. Michael Swinwood
Elders Without Borders
237 Argyle Avenue
Ottawa, ON
K2P 1B8

Re: Sarazin et al v Canada

Dear Mr. Swinwood:

We have received your letter dated July 24, 2017 to which is attached a copy of recent correspondence between yourself and Mr. John Tyhurst, litigation counsel for Canada.

We understand that your clients, the Grandmothers of Pikwakanagan, have asserted indigenous title to certain lands in the Ottawa Valley. Your clients are also asking to be specifically consulted with respect to the development being proposed over portions of Chaudière and Albert Islands. This development project led by Windmill is known as the Zibi Project.

As you likely know, the bulk of the lands on Chaudière and Albert Islands are privately-owned and are not subject to any Crown control or decisions. The federally-owned parcels on Chaudière and Albert Islands that are proposed to be transferred from Her Majesty the Queen in Right of Canada to the NCC and subsequently from the NCC to the Windmill Development Group Ltd. are subject to historical leases dating back to 1881 and 1889. The tenants, pursuant to their leasehold interests, have the care and control of the property, and the Crown has very limited rights thereunder.

Extensive consultations were undertaken by both the NCC and the developer with many Algonquin groups including the Algonquins of Pikwakanagan.



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237 Argyle Avenue, Ottawa, ON, K2P 1B8 - 613-852-8384



National Capital Commission
202-40 Elgin St.
Ottawa, ON
K1P 1C7
Attention: Mr. Mark Dehler, General Counsel

August 21, 2017

Dear Mr. Dehler,

Re: Sarazin et al v. Canada

I thank you for your reply of August 11, 2017. I apologize for not responding sooner, however I was away from my office.

As this is an indigenous title issue, Her Majesty the Queen in the Right of Canada should be the point of consultation, however, Mr. John Tyhurst, on behalf of Canada, has directed that we consult with you and therefore we have undertaken this consultation with you.

Firstly, as a result of a memorandum of understanding between the NCC and Windmill, Canada became a co-developer with Windmill. The proposed transfer you mention would appear to be the role assumed by Canada in the co-development agreement. In this proposed transaction the indigenous rights of the Algonquin Anishinabe peoples are to be eliminated. The traditional Grandmothers of Pikwakanagan assert indigenous title these lands and have expressed this in Superior Court action Sarazin et al v. Canada.

Extensive consultations may have taken place, however it was not accompanied by extensive knowledge of the relationship between the Algonquin Anishinabe peoples and the federal government. The Algonquins of Pikwakanagan under the Indian Act are not the same representative group as the traditional Grandmothers of Pikwakanagan, who represent the laws, traditions and customs of the Algonquin Anishinabe peoples. As chief and band council of Pikwakanagan are created by the Indian Act, any negotiation by Canada with them is a negotiation with itself. All matters are supervised by the superintendent of Indian Affairs and the Chief and band council have no powers beyond what is set out in the Indian Act. They have no powers to negotiate Section 35 of the Constitution Act rights and they certainly do not have a mandate from the Algonquin Anishinabe peoples to conclude a land claim or lend their consent to the alienation of an indigenous title on Albert and Chaudiere Islands.



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Reference can be made to excerpts from *Tsilhqot'in v. BC* 2014 SCC 44., to underline the obligations of Canada in the proposed transfer from her Majesty the Queen in the Right of Canada, to the NCC, to Windmill. I particularly bring to your attention paragraph 79 of *Tsilhqot'in* as follows: "Where consultation or accommodation is found to be inadequate, the government decision can be suspended or quashed." Also, paragraph 89: "If the Crown fails to discharge its duty to consult, various remedies are available including injunctive relief, damages, or an order that consultation or accommodation be carried out: *Rio Tinto Alcan Inc. v Carrier – Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650, at par 37." Furthermore, paragraph 92: "For example, if the Crown begins a project without consent prior to Aboriginal title being established, it may be required to cancel the project upon establishment of the title if continuation of the project would be unjustifiably infringing."

The Crimes Against Humanity Act 2000, defines the crime of apartheid as: "...inhumane acts... committed in the context of an institutional regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime." This is the Indian Act of Canada, historically and today. It was implemented to do away with the indigenous form of governance, among many other destructive policies.

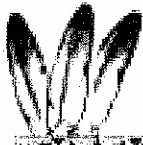
There are no indigenous laws, traditions or customs in the Indian Act.

The traditional Algonquin Grandmothers of Pikwakanagan not only assert indigenous title, but also assert that the Albert, Chaudiere Islands and the Chaudiere Falls are sacred to the Algonquin Anishinabe Peoples. Canada would not displace a mosque, a synagogue or a church to allow condos and hotels to be developed, but will allow the desecration of an indigenous site to the detriment of future generations of Algonquin Anishinabe Peoples; indeed all indigenous peoples throughout Canada.

Presently, the Supreme Court of Canada is about to hear the case on sacred place put forward by the Ktunaxa Nation from B.C. Any unilateral action by Canada in the face of this pending decision would be unwise. The assertion by the traditional peoples that this is a sacred site is deserving of extra special attention.

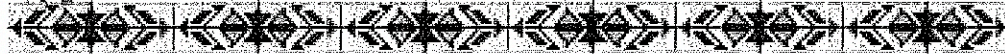
The forceful dispossession of this site from Algonquin control to allow for industrial uses by Philomen Wright and others cannot stand as proper passing of title to Windmill Development. History has been unkind to the indigenous way of life, however their way of life has not disappeared, nor have the indigenous peoples.

To properly address the questions raised in your last paragraph, please refer to the Amended Statement of Claim in *Sarazin et al v. Canada*, a copy of which is enclosed.



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Grandfather William Commanda, the traditional Algonquin Elder, engaged in extensive consultations with the NCC, over many years, resulting in an agreement to develop these lands under the stewardship of the Algonquin peoples. Politically, the ex. Minister of Heritage reversed this policy decision and facilitated the handover of these lands to Windmill. The traditional Grandmothers of Pikwakanagan seek to resume those consultations to allow for the previous decision to be implemented, all in keeping with the laws, traditions and customs of the Algonquin Anishinabe peoples. Giving this history, you should not be surprised at the request to conduct consultations.

My clients request that you confirm that you will consult with them and request that a meeting be convened to commence the consultations.

I look forward to your reply.

Yours truly,

Elder Without Borders
per Michael Swinwood

August 12, 2017 Lindsay Lambert's Letter to the Ottawa Citizen

Dear Editor,

Paul Dewar proposes that our city can leave a Canada 150 legacy by taking "a real step in reconciliation with Indigenous peoples by fulfilling the vision of the late Algonquin elder William Commanda by building a national Indigenous centre on Victoria Island."

This is not William Commanda's vision: His vision, which is known and has widespread support, is for freeing the Chaudiere Falls from the Ring Dam, re-naturalizing Chaudiere and Albert Islands as parkland for everyone to share, and constructing an Indigenous healing and peace centre on Victoria Island. Without the first two elements, an Indigenous centre will be just another building.

The Chaudiere Falls and Islands have been an important Indigenous sacred and peaceful meeting place for at least 5,000 years, which is just the archaeological record. There are older sites nearby. This pre-dates Stonehenge and the Great Pyramid at Giza. It's human history. Although the area is within Algonquin territory, it was recognized as a neutral place where anybody could meet. People came from huge distances. They would camp on the riverbanks, leave their weapons behind, and canoe to the Islands to gather in peace. It was a place of communications and governance. Enemies met here. It's a place without War, which might be unique in this world. Canada is supposed to be a peacekeeping nation. We should be celebrating this, which Grandfather Commanda's vision does.

People met continuously at the Chaudiere Falls and Islands until they were ultimately pushed aside by European settlement and industry. If we truly want to reconcile with Indigenous peoples, we can give the area back. It can then be re-established as the great meeting place. First Nations people will have a place to stand and call home in our nation's Capital, where they will never be invisible again. After all, the Chaudiere Islands are unceded Algonquin territory, along with the rest of the Ottawa Valley watershed. It's stolen land. (This is a legal fact, acknowledged by the Supreme Court.) Given the great spiritual and historical significance, this one small area should be returned without hesitation.

Following settlement, the Chaudiere Falls became Ottawa's oldest and most beloved tourist attraction. They were second only to Niagara, and many considered them more interesting in their variety and setting. People came here to see them, and bought postcards and souvenirs. Ottawa has been described as "a city of cascades" with the Chaudiere Falls being "a hundred rivers struggling for a passage." The sacredness of the Falls is not lost on poets. On May 16th, 1876, William Pittman Lett wrote:

Go, Atheist, stand on its brink
And for a moment pause and think
While gazing on this mighty link
In grand old Creation's chain!

Sadly, the entire span of the Falls was dammed over in 1908 - 1910. What people are currently calling the Chaudiere Falls is only the overflow from the Ring Dam. It's an industrial site. It's nothing like what it was. They should be freed. We are the only National Capital in the world with a major waterfall at its centre. It can be a major tourist destination again, which will be good for our region's economy. Look what the Rideau Canal brings, and it's just a man-made structure.

Paul Dewar was once the greatest supporter of Grandfather William Commanda's vision. He has pulled back, and is being disingenuous in saying that the vision was only for the Indigenous centre on Victoria Island. I find it suspicious that Mr. Dewar, as Member of Parliament for Ottawa Centre, had

his constituency office in the Windmill Development Group's building at 1306 Wellington Street West.

Grandfather Commanda was appointed an Officer of the Order of Canada and presented with the Key to the City for his peace and environmental initiatives. He was no slouch.

Jacques Greber's "Plan for the National Capital" was commissioned by the Federal Government as their Master Plan for the long-term growth and development of the Capital Region. (The text is available on-line.) The National Capital Commission was established to implement it. It gives us Confederation Square, the Greenbelt, the Parkway and the Queensway, among others. Greber specifies on page 230 that "the most effective improvement will be the central park at the Chaudiere Falls" once the "heavy and obnoxious industries" are gone. He continues on page 250 that "such proposal aims to give a more dignified environment to the representative buildings of the nation... The restoration of the Chaudiere Islands to their primitive beauty and wildness, is perhaps the theme of greatest importance. from the aesthetic point of view -- the theme that will appeal, not only to local citizens, but to all Canadians who take pride in their country and its institutions." How can we have forgotten this? It's the jewel in the crown!

Why don't we realize the full visions of William Commanda and Jacques Greber as our Canada 150 legacy? It will be a real step towards reconciling with Indigenous people, beyond what is now largely rhetoric. It will benefit all of us, and generations to come.

Yours sincerely,
M. Lindsay Lambert.

41 Bellwood Avenue,
Ottawa, ON K1S 1S6.
Telephone: [\(613\)730-7797](tel:6137307797).

Lindsay Lambert's Letter to the Mayor of Ottawa

August 8th, 2017.

Mr. Jim Watson,
Office of the Mayor,
City of Ottawa,
110 Laurier Avenue West,
Ottawa, ON K1P 1J1.

Dear Mr. Watson,

On October 8th, 2014, the Ottawa City Council voted to re-zone the Domtar industrial site from Parks and Open Space to Downtown Mixed Use at the request of the Windmill Development Group. The area of re-zoning was specifically defined as "3 and 4 Booth Street (Chaudiere and Albert Islands)".

Do you know the exact extent of these two street addresses, and are you aware that the City's zoning of the lands is unlawful under Federal Government Statute?

Please find enclosed a map from the Service Ontario Land Registry. According to the Region 03 Assessment Roll for property taxes there are three numbered addresses, 3, 4 and 6 Booth Street, all on Chaudiere Island. I have indicated these. (Other areas are described by Lot and Parcel only.) The Phase I Environmental Site Assessment commissioned by Windmill is for 3, 4 and 6 Booth. As you can see, your re-zoning is for less than half of Chaudiere Island, and Albert Island is not included.

Windmill is currently identifying 6 Booth Street as Albert Island, which contradicts the Assessment Roll. The latter should be accurate, however, as it determines people's tax bills.

I have enclosed the text of "An Act respecting certain Works on the Ottawa River." This Statute dates from 1870 and is still in effect. It establishes that Parliament has exclusive authority over everything in or on the Ottawa River, irrespective of whether it is for the purpose of public utility or not, or constructed by the Government or private interests. It is all administered "for the general advantage of Canada."

When this Statute was assented to, the Chaudiere Islands among others, along with an area of Ottawa shoreline, had already been reserved for Public Purposes by an 1854 Province of Canada Order-In-Council. (I have enclosed a copy.) It would take a new Act of Parliament to change this. Did Parliament direct the Ottawa City Council to approve private development on 3 and 4 Booth Street? You lack jurisdiction otherwise.

You need to revisit your zoning decision.

Another detail worth noting on the Service Ontario Land Registry map is that half of Albert Island is Unpatented Land. It has never been officially assigned to anybody. Richard Jackman, who appealed the City Council's re-zoning decision to the Ontario Municipal Board, brought this to the attention of Member Richard Makuch during the pre-hearing. He questioned how Unpatented Land can be subject to any zoning. This was evidently important, as the City's Senior Legal Counsel, Timothy Marc, made a point of countering it during his concluding arguments on August 19th, 2015. He declared that the area is industrial infill which didn't exist before, and is therefore irrelevant. Unfortunately, he presented false information to discredit Mr. Jackman's concern: If you compare current maps with the original 1852 survey, you will find that Albert Island has changed little over the

years. The only infill is a narrow extension of the south shoreline. I have marked this on the enclosed map.

In any case, Albert Island is not within the zoned area of 3 and 4 Booth Street.

I will be grateful if you can please give these issues your attention. I am looking forward to your reply.

Yours sincerely,
M. Lindsay Lambert.